

**Connecticut General Assembly  
General Law Committee**

**Testimony of  
Robert L. Shepherd  
Regarding Senate Bill No. 865  
*An Act Concerning the Taxation of Snuff Tobacco Products***

February 24, 2011

Mr. Co-Chairs and Members of the Committee, thank you for the opportunity to speak today.

My name is Robert Shepherd, and I am offering testimony to the Committee today in opposition to Senate Bill No. 865.

My comments and opinions are based on my career of 25 years of government service in New York State, and 13 years subsequent experience in the tobacco industry. In New York, I was a police officer for 7 years, an Assistant District Attorney in the Bronx for 7 years, and I served for 11 years at the New York State Tax Department where I was a Deputy Commissioner. Since leaving government I have concentrated my practice almost exclusively in tobacco. I have represented tobacco manufacturers and distributors across the country. For several years I was the Executive Director of the Northeast Association of Wholesale Distributors – cigarette and tobacco distributors in the New England States.

I am appearing here today representing Philip Morris USA Inc. and U.S. Smokeless Tobacco Company, both Altria companies. UST, through its subsidiaries, manufactures moist smokeless tobacco (MST) products such as Copenhagen and Skoal, along with other brands such as Red Seal and Husky.

You did the right thing in 2000 when you changed the way MST was taxed in Connecticut, from an *ad valorem* method to a weight-based method.

Excise taxes are traditionally levied on the individual item, based on a measuring unit of that item. Thus, gasoline excise taxes are measured by the gallon, alcoholic beverage excise taxes are measured by the liter or wine-gallon, and cigarette excise taxes are measured by the stick. When



you drive into a gas station, you choose whether to use premium or regular gasoline. The excise tax on each gallon is the same. Similarly, a bottle of wine carries the same amount of excise tax, regardless of whether it is inexpensive “jug” wine or a fine merlot. A pack of premium brand cigarettes carries the same amount of excise taxes as a price-value brand. Sales taxes, by contrast, are traditionally levied based upon the price of the product.

Today, you have been asked to back away from the visionary step you took in 2000 and go back to an antiquated and broken system of taxation that will put state revenues at risk, provide a competitive advantage to lower-priced products, and create unfairness for the consumer.

In 2000, Connecticut became one of the first states to join the federal government in taxing MST by weight rather than a percentage of price. In doing so, this Legislature recognized that one ounce of MST is the same as any other ounce of MST for tax purposes, and ought to be taxed that way. *Today, 20 states and the federal government tax MST by weight or unit.*

Connecticut has continued to see steady growth in MST tax-paid sales.<sup>1</sup> And since all cans carry the same tax burden, revenues have increased in lock-step. In states that tax MST using an ad valorem rate, overall can sales have continued to grow, but adult consumer down-trading to less expensive brands, where the tax paid is less, have meant that revenue collections have not grown the way they could have under a weight-based tax system.

Proponents of an ad valorem methodology argue that prices in this category automatically increase and that an ad valorem MST tax will automatically bring in increased revenues over time. *The truth is that prices in this category fluctuate – they do not automatically increase.* Under an ad valorem system, when prices decline, the state loses tax revenue. Thus, the state’s tax revenue stream is largely dependent on the pricing structures of the manufacturers. For example, at the end of 2006 one company cut the price on their brands by \$1.00 per can,<sup>2</sup> and in 2009 US Smokeless Tobacco Company cut the price on Copenhagen, Skoal, and Red Seal by 20% and was followed one week later by The American Snuff Company, a division of Reynolds American, who cut prices on Kodiak, Hawken, and Cougar by a similar amount.<sup>3</sup> But because you had adopted a weight-based – not a percent of price – system, Connecticut revenues were unaffected by these pricing changes. **If Connecticut had been under an ad valorem taxing system, the state would have lost over**



**\$162,000 as a result of the pricing fluctuations.**<sup>4</sup> Strictly from a revenue perspective, a weight based tax on MST remains a better, more stable choice for Connecticut tax collections.

Weight-based taxes have also protected Connecticut from the effects of other pricing behavior that can reduce revenues in ad valorem states. Some companies run pricing specials such as “2 cans – Special low price” offering 2 cans for the price of one. In this state, each can carries the same ultimate tax liability, while in ad valorem states, the state does not receive revenue on both cans. We agree that price competition is a good thing – and we believe that the best way to promote price competition is with an excise tax policy that is neutral on price, as Connecticut’s tax system is. A company should not be rewarded for lowering its price on MST by receiving an even lower excise tax obligation on its brand. This is what the proponents of an ad valorem MST tax methodology are asking you to do.

Ad valorem proponents argue that weight based taxes were designed to bar the entry of competitive brands and support a monopoly. Not true. There are more low-priced brands on the market today than ever before. Kayak, Longhorn, Triumph, Klondike, Dukes, Predator, Red Man, Tahoe, and Starr are some of the brands that have all been introduced within the last several years. Clearly, the market has not been closed.

Simply put, weight-based MST taxation repeal will undermine the stability of excise tax collections on smokeless tobacco products, provide an unjustified tax benefit to some brands over others based on price, and will move the state to an antiquated tax system that is not in the State’s or the adult consumer’s interest.

In sum, the Connecticut Legislature did the right thing when the MST excise tax was changed to a weight based tax.

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<sup>1</sup> Can volume is based on ALCS STARS database dated January 11, 2011.

<sup>2</sup> Compare Memorandum from Swisher Int’l, Inc. to Customers (Oct. 20, 2005) (identifying the 2005 per unit price of Swisher moist snuff brands at \$2.20) with Memorandum from Swisher Int’l, Inc. to Customers (Nov. 3, 2006) (identifying the 2006 per unit price of Swisher moist snuff brands at \$1.20).

<sup>3</sup> Price data is based on ALCS STARS database dated January 11, 2011.

<sup>4</sup> Can volume and price data are based on ALCS STARS database dated January 11, 2011.

